

November 22, 2010

Via hand delivery

Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

228299
228302
228304

ENTERED
Office of Proceedings

NOV 22 2010

Part of
Public Record

Re: Finance Docket No. 35443, *Union Electric Company v. Union Pacific Railroad Company*; Finance Docket No. 33508, *Missouri Central Railroad Company – Acquisition and Operation Exemption – Lines of Union Pacific Railroad Company*; Finance Docket No. 33537, *GRC Holdings Corporation – Acquisition Exemption – Lines of Union Pacific Railroad Company*

Dear Ms. Brown:

Enclosed for e-filing in the above-captioned dockets is the motion for protective order, and the motion for procedural schedule filed on behalf of Ameren Missouri and Missouri Central Railroad Company. The Complaint was hand-delivered today.

Please do not hesitate to contact the undersigned if you have any questions.

Yours very truly,



Sandra L. Brown

enclosures

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**UNION ELECTRIC COMPANY D.B.A
AMEREN MISSOURI and MISSOURI
CENTRAL RAILROAD COMPANY,**

Complainants,

v.

UNION PACIFIC RAILROAD COMPANY,

Defendant.

Finance Docket No. 35443

**MISSOURI CENTRAL RAILROAD
COMPANY – ACQUISITION AND
OPERATION EXEMPTION – LINES OF
UNION PACIFIC RAILROAD COMPANY**

and

**GRC HOLDINGS CORPORATION –
ACQUISITION EXEMPTION – LINES OF
UNION PACIFIC RAILROAD COMPANY**

Finance Docket No. 33508

Finance Docket No. 33537

MOTION FOR PROTECTIVE ORDER

James A. Sobule
Ameren Corporation
1901 Chouteau Avenue
St. Louis, MO 63103
314.554.2276
314.554.4014 (fax)

Sandra L. Brown
David E. Benz
Thompson Hine LLP
1920 N Street, N.W., Suite 800
Washington, DC 20036
202.263.4101
202.331.8330 (fax)

*Attorneys for Ameren Missouri and Missouri
Central Railroad*

November 22, 2010

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**UNION ELECTRIC COMPANY D.B.A
AMEREN MISSOURI and MISSOURI
CENTRAL RAILROAD COMPANY,**

Complainants,

v.

UNION PACIFIC RAILROAD COMPANY,

Defendant.

Finance Docket No. 35443

**MISSOURI CENTRAL RAILROAD
COMPANY – ACQUISITION AND
OPERATION EXEMPTION – LINES OF
UNION PACIFIC RAILROAD COMPANY**

and

**GRC HOLDINGS CORPORATION –
ACQUISITION EXEMPTION – LINES OF
UNION PACIFIC RAILROAD COMPANY**

Finance Docket No. 33508

Finance Docket No. 33537

MOTION FOR PROTECTIVE ORDER

Pursuant to 49 CFR § 1104.14(b), Union Electric Company d/b/a Ameren Missouri (“Ameren Missouri”) and the Missouri Central Railroad Company (“MCRR”) (collectively, “Ameren/MCRR”) respectfully request that the Surface Transportation Board (“Board” or “STB”) enter a protective order for the above-captioned proceeding, and in the form provided in Appendix A to this Motion. Ameren/MCRR request that the Board enter the proposed order on an expedited basis to facilitate the handling of its Verified Complaint or, in the Alternative,

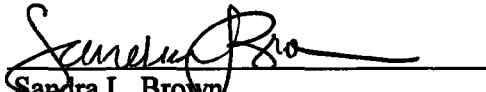
Petition to Revoke in Part ("Complaint") filed separately on this day. The Complaint contains sensitive and proprietary company-specific information that has been designated as confidential to be filed under seal. A public version of the Complaint was simultaneously filed.

Furthermore, the proposed order will enable the parties to file other confidential information with the Board and will facilitate discovery in this proceeding by protecting the confidentiality of contract terms and negotiations, financial information, and other commercially sensitive and proprietary information. The proposed order is similar to the format that has been used in other recent Board protective orders.

Accordingly, Ameren/MCRR respectfully request that the Board enter the protective order in this proceeding in the form provided in Appendix A to this motion, including the forms of undertaking that accompany it, on an expedited basis.

Respectfully submitted,

James A. Sobule
Ameren Corporation
1901 Chouteau Avenue
St. Louis, MO 63103
314.554.2276
314.554.4014 (fax)


Sandra L. Brown
David E. Benz
Thompson Hine LLP
1920 N Street, N.W., Suite 800
Washington, DC 20036
202.263.4101
202.331.8330 (fax)

*Attorneys for Ameren Missouri and Missouri
Central Railroad Company*

November 22, 2010

CERTIFICATE OF SERVICE

I certify that on November 22, 2010, I served the foregoing on the parties listed below as follows:


via Facsimile and Express Overnight delivery to:

Mike Hemmer,
Senior Vice President Law and General Counsel
Union Pacific Railroad Company
Stop 1580
1400 Douglas Street
Omaha, NE 68179

via Express Overnight delivery to:

Lon Van Gemert
Chief Executive Officer
Central Midland Railway
c/o Progressive Rail Incorporated
21778 Highview Avenue
Lakeville, MN 55044

Roger Nober
Executive Vice President Law & Secretary
BNSF Railway Company
2600 Lou Menk Drive
Fort Worth, TX 76131-2830



David E. Benz

APPENDIX A

PROTECTIVE ORDER

1. Any party producing information, data, documents or other material (hereinafter collectively referred to as "material") in discovery to another party to this proceeding, or submitting material in pleadings, that the party in good faith believes reflects proprietary or confidential information, may designate and stamp such material as "CONFIDENTIAL," and such material must be treated as confidential. Such material, any copies, and any data or notes derived therefrom:

- (a) Shall be used solely for the purpose of this proceeding and any judicial review proceeding arising herefrom, and not for any other business, commercial, or competitive purpose.
- (b) May be disclosed only to employees, counsel, or agents of the party requesting such material who have a need to know, handle, or review the material for purposes of this proceeding and any judicial review proceeding arising herefrom, and only where such employee, counsel, or agent has been given and has read a copy of this Protective Order, agrees to be bound by its terms, and executes the attached Undertaking for Confidential Material prior to receiving access to such materials.
- (c) Must be destroyed by the requesting party, its employees, counsel, and agents, at the completion of this proceeding and any judicial review proceeding arising herefrom. However, outside counsel and consultants for a party are permitted to retain file copies of all pleadings filed with the Board.
- (d) If contained in any pleading filed with the Board shall, in order to be kept confidential, be filed only in pleadings submitted in a package clearly marked on the outside "Confidential Materials Subject to Protective Order." See 49 CFR 1104.14.

2. Any party producing material in discovery to another party to this proceeding, or submitting material in pleadings, may in good faith designate and stamp particular material, such as material containing specific rate, traffic, or cost data or other competitively sensitive information, as "HIGHLY CONFIDENTIAL." If any party wishes to challenge such designation, the party may bring such matter to the attention of the Board. Material that is so designated may be disclosed only to outside counsel or outside consultants of the party requesting such materials who have a need to know, handle, or review the materials for purposes of this proceeding and any judicial review proceeding arising herefrom, provided that such outside counsel or outside consultants have been given and have read a copy of this Protective Order, agree to be bound by its terms, and execute the attached Undertaking for Highly Confidential Material prior to receiving access to such materials. Material designated as "HIGHLY CONFIDENTIAL" and produced in discovery under this provision shall be subject to all of the other provisions of this Protective Order, including without limitation paragraph 1.

3. In the event that a party produces material which should have been designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" and inadvertently fails to designate the material as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL," the producing party may notify the other party in writing within 5 days of the producing party's discovery of its inadvertent failure to make the confidentiality designation. The party who received the material ("receiving party") without the confidentiality designation will return the non-designated portion (including any and all copies in any form or format) or destroy it, as directed by the producing party, or take such other steps as the parties agree to in writing. The producing party will promptly furnish the receiving party with properly designated material.

4. In the event that a party inadvertently produces material that is protected by the attorney client privilege, work product doctrine, or any other privilege or protection from discovery or disclosure, the producing party may make a written request, within a reasonable time after the producing party discovers the inadvertent disclosure, that the receiving party return the inadvertently produced privileged document(s). The receiving party will either return the inadvertently produced document(s) (including any and all copies in any form or format) to the producing party or destroy that (those) document(s) immediately upon receipt of the written request, as directed by the producing party. By returning or destroying the document, the receiving party is not conceding that the document is privileged and is not waiving its right to later challenge the substantive privilege claim, provided that it may not challenge the privilege claim by arguing that the inadvertent production waived the privilege.

5. If any party intends to use "CONFIDENTIAL" and/or "HIGHLY CONFIDENTIAL" material at hearings in this proceeding, or in any judicial review proceeding arising herefrom, the party so intending shall submit any proposed exhibits or other documents setting forth or revealing such "CONFIDENTIAL" and/or "HIGHLY CONFIDENTIAL" material to the Board, or the court, as appropriate, with a written request that the Board or the court: (a) restrict attendance at the hearings during discussion of such "CONFIDENTIAL" and/or "HIGHLY CONFIDENTIAL" material; and (b) restrict access to the portion of the record or briefs reflecting discussion of such "CONFIDENTIAL" and/or "HIGHLY CONFIDENTIAL" material in accordance with the terms of this Protective Order.

6. If any party intends to use "CONFIDENTIAL" and/or "HIGHLY CONFIDENTIAL" material in the course of any deposition in this proceeding, the party so intending shall so advise counsel for the party producing the materials, counsel for the deponent, and all other counsel attending the deposition, and all portions of the deposition at which any such "CONFIDENTIAL" and/or "HIGHLY CONFIDENTIAL" material is used shall be restricted to persons who may review the material under this Protective Order. All portions of deposition transcripts and/or exhibits that consist of or disclose "CONFIDENTIAL" and/or "HIGHLY CONFIDENTIAL" material shall be kept under seal and treated as "CONFIDENTIAL" and/or "HIGHLY CONFIDENTIAL" material in accordance with the terms of this Protective Order.

7. To the extent either party is required to produce to the other party contracts (including but not limited to, rail transportation contracts) or other documents or information which, because of confidentiality provisions, cannot be produced without a Board order directing their production to the extent that (1) the other party has requested that the documents be

produced in discovery, and (2) the parties agree that the requested documents would be properly discoverable in this proceeding but for the confidentiality provision(s). Such documents shall be required to be produced only after the other party(ies) to a contract (or other document subject to a confidentiality provision) who are entitled to prior notice have been provided written notice and a reasonable opportunity to object to that production and obtain a ruling from the Board on that objection. Any documents (including, without limitation, contracts) produced pursuant to this Section 7 shall be treated as "HIGHLY CONFIDENTIAL" and shall otherwise be subject to the terms of this Protective Order. To the extent that material reflecting the terms of contracts, shipper-specific traffic data, other traffic data, or other proprietary information is produced by a party in this or any related proceedings and is held and used by the receiving person in compliance with this Protective Order, such production, disclosure, and use of the material and of the data that the material contains will be deemed essential for the disposition of this and any related proceedings and will not be deemed a violation of 49 U.S.C. 11904.

8. Except for this proceeding, the parties agree that if a party is required by law or order of a governmental or judicial body to release "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" material produced by the other party or copies or notes thereof as to which it obtained access pursuant to this Protective Order, the party so required shall notify the producing party in writing within 3 working days of the determination that the "CONFIDENTIAL" material, "HIGHLY CONFIDENTIAL" material, or copies or notes are to be released, or within 3 working days prior to such release, whichever is soonest, to permit the producing party the opportunity to contest the release.

9. Information that is publicly available or obtained outside of this proceeding from a person with a right to disclose it shall not be subject to this Protective Order even if the same information is produced and designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" in this proceeding.

10. Each party has a right to view its own data, information and documentation (i.e., information originally generated or compiled by or for that party), even if that data, information and documentation has been designated as "HIGHLY CONFIDENTIAL" by a producing party, without securing prior permission from the producing party. If a party (the "filing party") files and serves upon the other party (the "reviewing party") a pleading or evidence containing the filing party's "HIGHLY CONFIDENTIAL" material, the filing party shall also prepare and serve contemporaneously upon the reviewing party a "CONFIDENTIAL" version of the pleading or evidence from which the filing party's "HIGHLY CONFIDENTIAL" material has been redacted. The "CONFIDENTIAL" version may be provided in hardcopy or electronic format at the option of the filing party, and may be disclosed to those personnel employed by the reviewing party who have read a copy of this Protective Order and executed the attached Undertaking for Confidential Material ("In-house Personnel").

11. Any party filing with the Board a "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" pleading in this proceeding should simultaneously file a public version of the pleading.

UNDERTAKING

CONFIDENTIAL MATERIAL

I, _____, have read the Protective Order served on _____, 2010, governing the production of confidential documents in STB Docket Nos. _____, 33508, and 33537, understand the same, and agree to be bound by its terms. I agree not to use or permit the use of any data or information obtained under this Undertaking, or to use or permit the use of any techniques disclosed or information learned as a result of receiving such data or information, for any purposes other than the preparation and presentation of evidence and argument in STB Docket Nos. _____, 33508, and 33537 or any judicial review proceeding arising herefrom. I further agree not to disclose any data or information obtained under this Protective Order to any person who has not executed an Undertaking in the form hereof. At the conclusion of this proceeding and any judicial review proceeding arising herefrom, I will promptly destroy any copies of such designated documents obtained or made by me or by any outside counsel or outside consultants working with me, provided, however, that outside counsel may retain file copies of pleadings filed with the Board. I understand and agree that money damages would not be a sufficient remedy for breach of this Undertaking and that parties producing confidential documents shall be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach, and I further agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Undertaking but shall be in addition to all remedies available at law or equity.

Signature: _____

Date: _____

UNDERTAKING

HIGHLY CONFIDENTIAL MATERIAL

As outside [counsel] [consultant] for _____, for which I am acting in this proceeding, I have read the Protective Order served on _____, 2010, governing the production of confidential documents in STB Docket Nos. _____, 33508, and 33537, understand the same, and agree to be bound by its terms. I further agree not to disclose any data, information or material designated "HIGHLY CONFIDENTIAL" to any person or entity who: (i) is not eligible for access to "HIGHLY CONFIDENTIAL" material under the terms of the Protective Order, or (ii) has not executed a "HIGHLY CONFIDENTIAL" undertaking in the form hereof. I also understand and agree, as a condition precedent to my receiving, reviewing, or using copies of any documents designated "HIGHLY CONFIDENTIAL," that I will limit my use of those documents and the information they contain to this proceeding and any judicial review proceeding arising herefrom, that I will take all necessary steps to assure that said documents and information will be kept on a confidential basis by any outside counsel or outside consultants working with me, that under no circumstances will I permit access to said documents or information by personnel of my client, its subsidiaries, affiliates, or owners, and that at the conclusion of this proceeding and any judicial review proceeding arising herefrom, I will promptly destroy any copies of such designated documents obtained or made by me or by any outside counsel or outside consultants working with me, provided, however, that outside counsel may retain file copies of pleadings filed with the Board. I further understand that I must destroy all notes or other documents containing such highly confidential information in compliance with the terms of the Protective Order. Under no circumstances will I permit access to documents designated "HIGHLY CONFIDENTIAL" by, or disclose any information contained therein to, any persons or entities for which I am not acting in this proceeding. I understand and agree that money damages would not be a sufficient remedy for breach of this Undertaking and that parties producing confidential documents shall be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach, and I further agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Undertaking but shall be in addition to all remedies available at law or equity.

OUTSIDE [COUNSEL][CONSULTANT]

Dated: _____